IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

LA.App..No. 940 of 2004()
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LAR.395/1999 of SUB COURT, MUVATTUPUZHA
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APPELLANT:
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JOLLY, S/O.THOMAS, VATTAMKANDATHIL,
PANDAPPILLY, REPRESENTED BY POWER OF ATTORNEY
HOLDER KURIAN, S/O.VARKEY, VALLAMATTOM,
PANDAPPILLY.

BY ADV. SRI.V.M.KURIAN
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS:
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STATE OF KERALA REPRESENTED BY THE
DISTRICT COLLECTOR, ERNAKULAM.

BY GOVERNMENT PLEADER

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**Kurian Joseph & T.R. Ramachandran Nair, JJ.**

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**L.A.A..NO.940 of 2004-D**

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**Dated this the 20th day of June, 2007**

**JUDGMENT**

**T.R. Ramachandran Nair, J.**

This appeal is filed at the instance of the claimant in L.A.R. No.395/1999 of the Sub Court, Muvattupuzha. The appellant claimed enhanced compensation for the building which was acquired along with 0.0040 hectares of land. The acquisition was for the implementation of Muvattupuzha Valley Irrigation Project and the notification under Section 4 (1) of the Act was published on 24.8.1995. The award was passed on 27.1.1997 and possession of the property was also taken on the same day. For the land acquired, the Land Acquisition Officer awarded land value at the rate of Rs.8,600/- per are, as against the claim of Rs.25,000/- per cent. For the building, the amount claimed was Rs.15 lakhs and the value awarded is Rs.4,50,989/-. The reference under Section 18 of the Act was dismissed by the court below, finding that claimant is not entitled to any enhanced compensation for the land and for the building. Aggrieved by the same, this appeal has been filed.

2. The appellant is aggrieved by the refusal to enhance compensation

for the building. What is claimed in the appeal is 50% over the value fixed by the Land Acquisition Officer, i.e. Rs.2,25,000/- and court fee has been paid accordingly.

3. In support of the claim for enhanced compensation for the building, the claimant produced Exts.A1 and A2. It is clear from the evidence that the building was constructed in the year 1987-88 and compensation was given on the basis of the P.W.D. schedule of of the year 1992. Exts.A1 and A2 are agreements relating to construction of a building at Ernakulam wherein the contractor has been awarded at 105% above the 1992 rate, on 25.3.1996. Ext.A2 is in respect of a building constructed for the Muttom Poly Technic wherein an agreement was entered into with a contractor at 87% above the 1992 rate, on 7.7.1995.

4. The court below took the view that for the building in question which was constructed in the year 1987-88 compensation was given at the rate prevailing in the year 1992. Exts.A1 and A2 were not relied upon for the reason that the rates therein are subsequent to the P.W.D. rates fixed in the year 1992. Accordingly, the court below took the view that for the building in question which was constructed in the year 1987-88 compensation has been awarded based on the rates in 1992 and hence the claimant is not entitled for enhanced compensation.

5. Heard learned counsel for the appellant and the learned Govt. Pleader for the respondents.

6. Learned counsel for the appellant contended that the approach made by the court below is erroneous. The claimant is entitled for the value as on the date of the notification issued under Section 4(1) of the Act. It is pointed out that the P.W.D. rates for the year 1992 was the basis on which the land acquisition authorities valued the building. The said rates were revised in 1996 and the average increase was more than 50%. Therefore, it is contended that Exts.A1 and A2 which reflects an increase of 105% and 87% over the agreement executed during the years 1996 and 1995 ought to have been relied upon by the trial court. It has also been pointed out that the building of the appellant was valued during December 1996 according to the 1992 schedule of rates, after the schedule of rates was revised in 1996 and after deducting depreciation for 10 years. Learned counsel also pointed out that the building ought to have been valued applying 1996 rates. A decision of a Division Bench reported in **Mytheen Kunju Abdulrahiman Kunju v. State** (1954 KLT 798) was also relied upon by the learned counsel in support of the above contentions. Learned Govt. Pleader supported the reasoning adopted by the court below.

7. The question is whether a proper method was adopted for fixing the market value of the building as on the date of the notification under Section 4(1) of the Act. At the outset, we find that the approach made by the court below is not the correct one. The Division Bench in 1954 KLT 798 (supra) considered in detail the principles and the method to be adopted for valuation of building in land acquisition cases. Their Lordships laid down the law in the following terms:

> " To arrive at the present value of the building, the proper course would be to find out the cost of constructing a building of this type at the time of the acquisition and then deduct from it the depreciation value on account of the age of the building and also the amount required for repairs to keep the building in a fit condition. The natural way to look at the matter would be to find out the approximate number of years and deduct the quotient as depreciation for each year. In the case of first class buildings no depreciation is to be deducted for 5 years and then 5/6$^{th}$ per cent has to be deducted for every subsequent year. Due allowance has to be made for maintenance and repairs. In the case of second class buildings 5/6$^{th}$ per cent depreciation has to be deducted for each year."

Thus, the method to be adopted is clear. The Land Acquisition Officer adopted the P.W.D. schedule rates for the year 1992 for valuing the building even though the notification was dated 24.8.1995. When the award was passed, the rates for 1996 have been fixed after revising the schedule rates for the year 1992. The entitlement of the claimant to get the market value as on the date of the notification was not at all considered. Therefore, the

matter will have to be reconsidered in accordance with the relevant principles.

8. Hence, we set aside the judgment of the court below and remand the matter for fresh consideration on merits. The parties will be allowed to adduce fresh evidence also. The appellant will be entitled for refund of the court fee paid on the memorandum of appeal, being a remand.

The appeal is disposed of accordingly.

**(Kurian Joseph, Judge.)**

**(T.R. Ramachandran Nair, Judge.)**

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